

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

HENRY NARANJO

Plaintiff,

vs.

STEPHEN BYRON SMITH, and  
PALMER JOHNSON, INC.

Defendants,

\_\_\_\_\_  
PALMER JOHNSON, INC.

Third Party Plaintiff,

vs.

TOM FEXAS YACHT DESIGN, INC.

\_\_\_\_\_  
Third-Party Defendant.

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**PLAINTIFF, HENRY NARANJO'S, MOTION IN LIMINE**  
**NEGLIGENCE OF BRADFORD MARINE**

Comes now the Plaintiff, HENRY NARANJO, by and through his undersigned counsel, and files this Motion in Limine seeking an order to exclude any evidence of the negligence of Bradford Marine from being admitted at trial and, further, directing the defendants not to mention or refer to the negligence of Bradford Marine to the trier of fact, and states as follows:

1. HENRY NARANJO was an employee of Bradford Marine on July 7, 1997, when he was injured in an explosion on the Yacht "Souvenir", ex "Captivator." HENRY NARANJO was injured in the course and scope of his employment with Bradford Marine and filed a claim under the Longshore and Harbor Workers Compensation Act (LHWCA). When

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his claim under the LHWCA against Bradford Marine was resolved, HENRY NARANJO filed suit against the yacht's owner, Steven Smith, and the manufacturer of the yacht, Palmer Johnson, Inc., pursuant to 33 USC 905(b) and 33 USC 933, respectively.

2. While the principles of comparative negligence may be applicable as between HENRY NARANJO and the defendants, any negligence that may be attributable to Bradford Marine cannot be considered in this claim. The Supreme Court of the United States addressed this issue directly and held that "the employee may recover from the ship the entire amount of the damages so determined." Edmonds v. Compagnie Generale Transatlantique, 443 US 256, 266 (1979). While the 1972 amendment to the LHWCA eliminated the ship owners' liability to the longshoreman for unseaworthiness, there is nothing in the statute or its history expressly indicating that Congress intended to modify the existing rules governing the longshoreman's negligence suit against the vessel owner by diminishing his recovery for damages from the vessel owner on the basis of proportionate fault of the non-party stevedore. *Id.* at 262. The changes to 905(b) in 1972 did not effect the pre-existing rule that a longshoreman who is injured by the concurrent negligence of the stevedore and the ship may recover for the entire amount of his injuries from the ship. Walker v Blacksea Steamship Company, 637 F.2d 287 (5 Cir. 1981).
3. It is well settled that any negligence on the part of Bradford Marine that may have contributed to the plaintiff's injuries is not to be considered by the jury in determining damages. The presentation of any evidence regarding the negligence of Bradford Marine, if any, would have no probative value in determining the rights and liabilities of the

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parties to this lawsuit, and any such evidence would do nothing more than mislead or confuse the jury.

WHEREFORE, the Plaintiff, HENRY NARANJO, respectfully requests this Honorable Court to enter an Order directing the Defendants from presenting any evidence or otherwise mentioning any comparative negligence of Bradford Marine to the Jury.

**CERTIFICATE OF SERVICE**

**IT IS HEREBY CERTIFIED** that a true and correct copy of the foregoing **PLAINTIFF'S MOTION IN LIMINE** was mailed on this 11 day of October, 2001, to the parties listed on the attached List of Service.

Respectfully submitted,

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BY: 

F. DAVID FAMULARI, ESQUIRE  
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